



ORIGINAL

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October 31, 2005

Via Federal Express
Ms. Blanca Bayo, Director
The Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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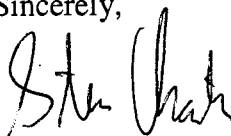
Re: Docket No. 041269-TP

Dear Ms. Bayo:

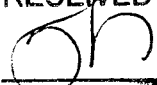
Enclosed for filing in the above-referenced docket, please find the original and fifteen (15) copies of Supra Telecommunications and Information Systems, Inc.'s Request for Official Recognition.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me in the self-addressed-stamped-envelope enclosed herein. Copies have been served to the parties shown on the attached Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,


Steven B. Chaiken

CMP _____
COM 3
CTR _____
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GCL Cc: All Parties of Record
OPC _____
RCA _____
SCR _____
SGA _____
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DA
10548 NOV-1 2
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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

DOCKET NO. 041269-TP

DATED: November 1, 2005

REQUEST FOR OFFICIAL RECOGNITION

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. ("Supra"), pursuant to Rule 90.202, Florida Rules of Evidence, and section 120.569(2)(i), Florida Statutes, requests Official Recognition of the attached *Order Granting Momentum Telecom, Inc.'s Motions for Clarification and Reconsideration* (the "Order") of the Alabama Public Service Commission in In re: Petition of the Competitive Carriers of the South, Inc. for an Emergency Declaratory Ruling in Docket No. 29393, issued October 27, 2005.

On or about August 22, 2005, Supra filed its Emergency Motion of Supra Telecommunications and Information Systems, Inc. To Require BellSouth Telecommunications, Inc. to Effectuate Orders for Supra's Embedded Customer Base. In Alabama, Momentum Telecom, Inc. made a similar request. The Alabama Public Service Commission ruled in favor of Momentum and granted the vary relief which Supra has requested of this Commission. Specifically, the Alabama Public Service Commission stated:


we herein require BellSouth to provision adds, changes and new UNE-P lines for existing CLEC customers during the one-year transition period even when those customers move to new physical locations. We conclude that our decision in this regard will be the most effective means of allowing CLECs to remain competitive while they negotiate and transition to the alternative service arrangements necessitated by the *TRRO*. We find such a result to be most consistent with the public interest, convenience and necessity.

Order at p. 6 -7.

This holding is even more applicable and important in Florida, where many customers have been affected by the recent hurricanes and have no choice but to move to new physical locations.

RESPECTFULLY SUBMITTED this 1st day of November 2005.

SUPRA TELECOMMUNICATIONS AND
INFORMATION SYSTEMS, INC.
2901 S.W. 149th Ave.
Miramar, Florida 33027
Telephone: 786.455.4239
Facsimile: 786.455.4600

By: 
Steven B. Chaiken

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been served by regular U. S. mail to Adam Teitzman, Kira Scott, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, and that a true copy thereof has been furnished to the following by U. S. mail this 1st day of November, 2005:

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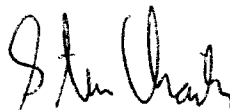
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STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

COMPETITIVE CARRIERS OF THE SOUTH, INC.,

Petitioners

**IN RE: Petition of the Competitive
Carriers of the South, Inc. for an
Emergency Declaratory Ruling**

DOCKET 29393

**ORDER GRANTING MOMENTUM TELECOM, INC.'S
MOTIONS FOR CLARIFICATION AND RECONSIDERATION**

BY THE COMMISSION:

I. The Petition of Momentum Telecom, Inc.

By Petition filed on or about June 20, 2005, Momentum Telecom, Inc. ("Momentum") petitioned to intervene in this cause and sought emergency clarification of the Commission's Order Dissolving Temporary Standstill and Granting in Part and Denying in Part Petitions for Emergency Relief which was entered in this proceeding on May 25, 2005 (the "May 25 Order").¹ The clarification sought by Momentum relates to the obligations of BellSouth Telecommunications, Inc. ("BellSouth") with respect to the provision of Unbundled Network Elements ("UNEs") for the "embedded customer base" of Momentum and other Competitive Local Exchange Carriers ("CLECs"). Although Momentum acknowledges that the applicable provisions of the Triennial Review Remand Order² issued by the Federal Communications Commission (the "FCC") and the Commission's May 25 Order clearly state that CLECs such as Momentum are not permitted to serve new customers through UNE-P arrangements, Momentum argues that BellSouth's UNE obligations with respect to the embedded customer base of Momentum and other CLECs remains unchanged during the 12-month period the FCC established in the *TRRO* for transitioning embedded UNE-P customers to other service arrangements.³

¹ Momentum's Petition to Intervene is hereby granted.

² *In the Matter of the Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313 (CC Docket No. 01-338) (February 4, 2005) (the "Triennial Review Remand Order," or the "*TRRO*")

³ See Momentum Petition at p. 1.

According to an attached affidavit from Mr. Brian Malone, Momentum's Director of Customer Care in Alabama, Momentum is forced to turn away current customers who seek to transfer their Momentum service to other locations to which they are moving because of BellSouth's erroneous interpretation that the *TRRO* and the Commission's May 25 Order permits BellSouth to refuse to process moves, adds or change orders for Momentum's existing customers.⁴ Momentum asserts that such a result is unnecessary, anticompetitive, and in violation of the transition period established in the *TRRO*.

In further support of its Petition, Momentum cites decisions from the jurisdictions of North Carolina, Michigan, Kansas, Texas and Indiana.⁵ In the estimation of Momentum, the cited decisions from the aforementioned jurisdictions clearly show that the FCC intended to prohibit CLECs from obtaining new UNE-P customers, but did not intend to prohibit such CLECs from continuing to serve existing customers, through the addition of new lines, changes in the services of those customers, or moving the services of those customers to another location so long as the customers do not change.⁶

Momentum argues that interim provisioning for existing CLEC customers is necessary to prevent the very disruption the FCC sought to avoid with its one-year transition period for the embedded customer base of CLECs. Without such an approach during the transition period, Momentum asserts that even the smallest change to a CLEC customer's existing service will require a CLEC serving that customer to refuse to provide the line or to surrender the customer. Momentum again maintains that such a result is unnecessary, disruptive, anticompetitive and in violation of the FCC's explicit instruction in the *TRRO* to

⁴ *Id.* at pp. 1-2.

⁵ *In the Matter of Complaints against BellSouth Telecommunications, Inc. Regarding Implementation of the Triennial Review Remand Order*, Docket No. P-55, Sub. 1550, at 12 (North Carolina Utilities Commission, April 25, 2005); *Application of Competitive Local Exchange Carriers to Initiate a Commission Investigation of Issues Related to the Obligation of Incumbent Local Exchange Carriers in Michigan to Maintain Terms and Conditions for Access to Unbundled Network Elements or Other Facilities used to Provide Basic Local Exchange and Other Telecommunications Services and Tariffs and Interconnection Agreements Approved by the Commission, Pursuant to the Michigan Telecommunications Act, Telecommunications Act of 1996, and other Relevant Authority*, Case No. U-14303 (and Consolidated Cases) at 9 (Mich. P.S.C., March 29, 2005); *In the Matter of a General Investigation to Establish a Successor Standard Agreement to the Kansas 271 Interconnection Agreement, Also Known as the K2A*, Docket No. 04-SWBT-763-GIT, at 5 (Kansas State Corporation Commission, March 10, 2005); *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821 (TX P.U.C., March 9, 2005); and *Complaint of Indiana Bell Telephone Company, Inc., d/b/a SBC Indiana for Expedited Review of a Dispute with Certain CLECs Regarding Adoption of an Amendment to Commission-Approved Interconnection Agreements*, Cause No. 42749 (Indiana Utility Regulatory Commission, March 9, 2005).

⁶ Momentum Petition at pp. 3-5.

continue for one-year Section 251 UNE-P access for the embedded customer base of CLECs. For the reasons stated above, Momentum respectfully requests that the Commission clarify its May 25 Order and expressly hold that BellSouth is required to continue providing service to Momentum's embedded customer base, including moves, adds and change orders when requested by Momentum's existing customers.⁷

II. BellSouth Telecommunication, Inc.'s Response in Opposition

On June 29, 2005, BellSouth filed its Response in Opposition to Momentum's Emergency Motion for Clarification (the "BellSouth Response"). In said Response, BellSouth argues that Momentum's Motion is contrary to the express provisions of the *TRRO* which preclude CLECs from adding "new UNE-P arrangements using unbundled access to local circuit switching pursuant to Section 251(C)(3)."⁸ BellSouth argues that when a CLEC orders a new UNE-P line to serve an existing customer, it is ordering new local switching and thus a "new UNE-P arrangement" which is prohibited under the plain language of the FCC's orders and rules as determined by numerous federal district courts.⁹ In urging a different conclusion, BellSouth contends that Momentum disregards the federal court decisions in *BellSouth v. Mississippi PSC* and *BellSouth v. MCImetro* and relies instead on state commission decisions from North Carolina, Michigan, Kansas, Texas and Indiana, which do not bind the Alabama Public Service Commission. BellSouth asserts that despite what North Carolina and a handful of other state commissions have apparently ordered, Momentum's Motion is inconsistent with the over-arching federal policy of requiring CLECs to move away from unlawful unbundling rules during the 12-month transition period established in the *TRRO*.¹⁰

BellSouth further argues that Momentum has conveniently chosen to ignore the decisions from other state commissions that have not required incumbent local exchange carriers such as BellSouth to

⁷ *Id.* at pp. 5-6.

⁸ BellSouth Response at p. 2, *Citing TRRO* ¶227.

⁹ *Id.*, *Citing BellSouth Telecommunications, Inc. v. Mississippi Public Service Commission*, 3:05CV173LN, 2005 WL 1076643, at *3, *6 (S.D. Miss. Apr. 13, 2005) ("*BellSouth v. Mississippi PSC*"); *BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services, LLC*, 1:05-CV-0674-CC, 2005 WL 807062, at *2 (N.D. Ga. Apr. 5, 2005) ("*BellSouth v. MCImetro*").

¹⁰ *Id.* at p. 3, *Citing TRRO* ¶227.

continue providing new UNE arrangements for existing customers. In particular, BellSouth cites a decision by the California Public Utilities Commission which held that the *TRRO* precluded the provision of any new UNE-P arrangements, not just for new customers but also for the provision of new arrangements for existing customers.¹¹ BellSouth also cited a June 20, 2005 Order by the Texas Public Service Commission wherein the Texas Commission reversed its previous decision cited by Momentum and held:

[t]he term "embedded customer base" should be read to grandfather only the existing lines of existing customers, and to disallow the growth of UNE-P lines. In other words, the Commission agrees with defining the embedded customer base as customers for whom no new ports must be added, but for whom new features may be added or deleted on request.¹²

BellSouth accordingly argues that the plain language of the *TRRO* precludes the addition of new UNE-P lines and thus prohibits Momentum from moving an existing UNE-P line from an existing customer's location to a different location because the result would be a new UNE-P line at a different locale. BellSouth contends that these matters were addressed when the Commission issued its Order of May 25, 2005, which specified that requesting carriers may not obtain new local switching as an unbundled network element.¹³

BellSouth further asserts that Momentum's allegations concerning insufficient service alternatives beyond UNE-P and Momentum's claims that BellSouth is acting in an anticompetitive manner lack credibility. In particular, BellSouth claims that Momentum's allegations that it will be forced to surrender customers without the ability to order UNE-P is unfounded due to the fact that Momentum can enter into a commercial agreement with BellSouth to continue to serve its customers and has the option of reselling BellSouth's services. BellSouth further asserts that Momentum's claims that BellSouth's activities are anticompetitive are flatly contradicted by the FCC's determination that "the disincentives to investment posed by the availability of unbundled switching ... justify a nationwide bar on such unbundling."¹⁴

¹¹ *Assigned Commissioner's Ruling Granting in Part Motion for Emergency Order Granting Status Quo for UNE-P Orders, Petition of Verizon California, Inc.*, App. No. 04-03-014 (Cal. PUC Mar. 11, 2005).

¹² BellSouth Response at p. 5, *Citing Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Texas P.U.C. Docket No. 28821, *Arbitration Award, Track II Issues* (Texas P.U.C., June 20, 2005).

¹³ *Id.* at pp. 6-7.

¹⁴ *Id.* at pp. 7-8, *Citing TRRO* ¶204.

BellSouth further maintains that Momentum's claim of harm is particularly unpersuasive in light of recent federal district court decisions in *BellSouth v. Mississippi PSC* wherein the court stated:

The court is persuaded that the competitors have alternative means of competing with BellSouth and that while some competitive LECs may suffer harm in the short-term ... they will do so only if they intended to compete by engaging in conduct that the FCC has concluded is anticompetitive and contrary to federal policy.¹⁵

In conclusion, BellSouth argues that Momentum's claims lack merit, disregard federal law, run counter to other Commission decisions and ignore the Commission's May 25, 2005 Order. BellSouth accordingly urges the Commission to deny said Motion.¹⁶

III. Findings and Conclusions

After considering the foregoing legal arguments and the case law precedent cited in support thereof, we initially voted at our meeting of August 2, 2005, to partially grant and partially deny Momentum's Petition for Clarification. More specifically, we initially voted to require BellSouth to continue provisioning adds, changes and even new UNE-P lines for existing CLEC customers at the current physical locations of those customers. We initially found, however, that BellSouth was not obligated to provision new UNE-P lines for existing CLEC customers at new locations and denied Momentum's request for such relief in our vote of August 2, 2005.

On or about August 10, 2005, Momentum filed a Petition for Reconsideration urging the Commission to modify its vote of August 2, 2005. In particular, Momentum applauds the Commission's decision to require BellSouth to continue provisioning adds, changes and new UNE-P lines for the embedded customer base of CLECs at their existing physical locations during the FCC-established transition period. Momentum urges the Commission to go further, however, by requiring BellSouth to continue the provisioning of new UNE-P lines for embedded CLEC customers when those customers move to different physical locations.

Momentum argues that a decision requiring the provisioning of new UNE-P lines for its embedded customer base at new locations would be most consistent with the FCC's stated intention of allowing

¹⁵ *Id.*, Citing *BellSouth v. Mississippi*.

UNE-P CLECs to maintain the status quo with respect to their embedded customer base during the one-year transition period established in the *TRRO*. Momentum also argues that such a result is entirely consistent with BellSouth's General Subscriber Services Tariff which acknowledges that a "customer" remains a "customer" regardless of whether they move to a new address.¹⁷ Momentum further notes that the state Public Service Commissions of Indiana and South Carolina have issued orders recognizing that CLECs may continue serving their embedded base of UNE-P customers whether the customer needs an extra line or is moving to a new address during the *TRRO* transition period.¹⁸

On or about August 19, 2005, BellSouth filed a Response in Opposition to Momentum's Petition for Reconsideration. BellSouth therein urges the Commission to deny Momentum's Request for Reconsideration based on the arguments raised by BellSouth in its June 29, 2005, Response in Opposition to Momentum's Petition for Emergency Clarification. BellSouth argues that Momentum can not seriously dispute that providing UNE-P lines for customers who move clearly results in new UNE-P lines. BellSouth asserts that the FCC has expressly ruled that Incumbent LECs need not provision such services.¹⁹

After careful consideration of all the pleadings submitted in this cause and in particular those submitted on reconsideration, we find that the result most consistent with the stated intentions of the FCC in establishing the twelve-month transition period set forth in the *TRRO* would be to grant the reconsideration request of Momentum. In so doing we herein require BellSouth to provision adds, changes and new UNE-P lines for existing CLEC customers during the one-year transition period even when those customers move to new physical locations. We conclude that our decision in this regard will be the most effective means of allowing CLECs to remain competitive while they negotiate and transition to the alternative service arrangements necessitated by the *TRRO*. We find such a result to be most

¹⁶ *Id.* at p. 8.

¹⁷ See Momentum Petition for Reconsideration at p. 2. Citing BellSouth's Alabama General Subscriber Services Tariff at Section A2.4.8L(1)(a).

¹⁸ See Momentum Petition for Reconsideration at p. 3. Citing Indiana Utility Regulatory Commission, Cause No. 42749, June 13, 2005; *In re: Petition of BellSouth Telecommunications, Inc. to Establish a Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Docket 2004-316-C-Order No. 2005-247, South Carolina P.S.C., Aug. 1, 2005.

consistent with the public interest, convenience and necessity. We accordingly vacate our previous vote of August 2, 2005, in favor of the findings and the conclusions set forth herein.

IT IS SO ORDERED.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 27th day of October, 2005.


ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


George C. Wallace, Jr., Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary

¹⁹ See BellSouth Response in Opposition at p. 1.